

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**PROFESSIONAL SECURITY  
CONSULTANTS, INC.**

**Employer,**

**Case No. 29-RC-140188**

**-and-**

**SECURITY ALLIANCE OF FEDERATED  
EMPLOYEES UNION, LOCAL 642**

**Petitioner**

**PETITIONER'S ANSWERING BRIEF TO EMPLOYER'S EXCEPTIONS TO  
HEARING OFFICER'S REPORT ON OBJECTION**

The Petitioner, Local 642, Security Alliance of Federated Employees Union ("Local 642 SAFE"), by its counsel Stephen Goldblatt, pursuant to the NLRB Rules and Regulations Section 102.69 et al., submits this opposition to the Employer's Exceptions to the Hearing Officer's Report on Objection in this matter.

On February 3<sup>rd</sup>, 2015 a hearing was conducted by Hearing Officer Tracey Bel Fiore on the subject of the Employer's objection to the conduct of election held on December 16, 2014. The Employer's objection at hearing was limited to the issue of whether alleged security supervisor William Tirado's conduct during the relevant period shall serve as a basis to void the results of the election. The election ballot tally was 18 for the Union, 5 against and 2 challenged ballots.

**Facts:**

The Employer employs security guards at Industry City in Brooklyn, NY, a complex of buildings with 24 hour security personnel. Local 642 SAFE Union filed a petition for election November 4, 2014 to represent security guards excluding supervisors as defined in the Act.

The Employer takes exception to the Hearing Officer Report ("H.O.R.") by challenging the credibility determinations by the Hearing Officer. The Employer also excepts to the Report not making a finding that Tirado was a supervisor despite the finding by the Hearing Officer that this issue is moot:

*"even assuming that Tirado was a supervisor within the meaning of  
The Act during the relevant period, I find that the credible evidence  
does not establish that Tirado's reasonably tended to coerce or interfere*

*with employee's free choice in the election under the applicable Harborside standard. I further find that Tirado's conduct did not interfere With freedom of choice to the extent that it materially affected the outcome of the election under the applicable Harborside standard...."*

Page 17. H.O.R.

The controlling Board law in the instant case is *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004) where the Board set the standard by which pro-union supervisory conduct may be found to be objectionable. It is respectfully submitted that an analysis of the facts at hearing in this matter does not rise anywhere close to the level required pursuant to *Harborside* to set aside the results as requested by the Employer.

**Absent specific cause the credibility finding of the Hearing Officer should not be disturbed:**

The Employer produced witness Mujat Khan, whom the Hearing Officer did not credit regarding portions of his testimony. The Employer now posits that this assessment was based upon the witness' difficulty in communication. It is respectfully submitted that this red herring should be dismissed. There is no indication anywhere in the record that any misunderstanding of testimony of Mr. Khan was a basis for a credibility finding. Rather, the inconsistency of his testimony, especially when contrasted with all other witnesses, even Employer

witnesses, supports the findings of the Hearing Officer. Khan testified that a Union meeting was held at a Spanish restaurant where liquor was served while all other witnesses testified the meeting was at McDonald's. Also, Khan's testimony was internally inconsistent with his prior written statements, as well as the credible testimony of other witnesses. Additionally, both Employer witnesses were promoted at the time they wrote their statements. The established Board rule is not to overrule the credibility determination of the Hearing Officer unless the clear preponderance of all of the relevant evidence convinces that it is incorrect. *BFI Waste Services*, 343 NLRB 254 (2006).

**Employer mitigates any alleged pro-union statements of alleged supervisor:**

The record shows that the Employer conducted a series of five lengthy anti-union compulsory meetings. An anti-union stance by the Employer will mitigate against any supervisor statement or conduct that could be viewed in support of the Union. *Northeast Iowa Telephone Company* 346 NLTB 465 (2006) where the Board found no coercion after multiple manager attendance at a meeting where they signed cards in front of employees and made pro-union statement.

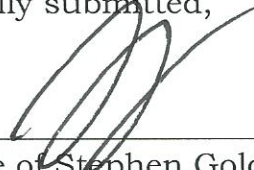


*See Northeast Iowa Telephone Co, 346 NLRB 465 (2006).*

**Conclusion:**

It is respectfully submitted that a preponderance of all of the relevant evidence, including the testimony of witness Robert Stevens and Darwin Dominguez, together with record exhibits and the Employer witnesses supports a determination that the findings of the Hearing Officer are well within the confines of the factual record adduced at the hearing of this matter together with Board precedent and are free from any material error prejudicial to any party or process and should be sustained in their entirety.

Respectfully submitted,



---

Law Office of Stephen Goldblatt  
3315 Nostrand Avenue – Suite L1A  
Brooklyn, NY 11229  
Tel: (718) 332-6474  
[goldblattlegal@gmail.com](mailto:goldblattlegal@gmail.com)

Dated: Brooklyn, NY  
April 20, 2015

copy to: Region 29 – NLRB  
Patrick Hoban, Esq.

## AFFIRMATION OF SERVICE

Olga Martysh, being duly sworn, deposes and says:


1. I am over 18 years of age and reside in Brooklyn, NY.
2. On April 20, 2015 I deposited PETITIONER ANSWERING BRIEF in a US Postal Service mail depository to the following parties:

Regional Director - Region 29 NLRB  
2 Metrotech Center - 5<sup>th</sup> Floor  
Brooklyn, NY 11210

Patrick Hoban, Esq.  
Zashin & Rich  
950 Main Avenue 4<sup>th</sup> Floor  
Cleveland, OH 44113

NLRB Executive Secretary  
1099 14<sup>th</sup> Street N.W.  
Wash., DC 20570

  
\_\_\_\_\_  
Olga Martysh

  
\_\_\_\_\_  
Notary Public  
STEPHEN GOLDBLATT  
Notary Public, State of New York  
No. 02GO6176512  
Qualified in Kings County  
Commission Expires October 29, 2015